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FOREIGN SERVICE DESPATCH

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SUBJECT: Interpretation of FCN Treaty Provisions

PA or FOI EXCEPTIONS

The visit to Tokyo of Mr. Vernon C. Setser, Division of Commercial Policy, offered Embassy officers an excellent opportunity for a review of the major questions which have arisen during the informal discussions on the FCN Treaty with the Ministry of Foreign Affairs. Mr. Setser's assistance and guidance in these policy matters was most helpful and is deeply appreciated by the Embassy.

During Mr. Setser's stay in Tokyo two meetings were arranged with the appropriate officials of the Ministry of Foreign Affairs, including Mr. Morio YUKAWA, Director of the Economic Affairs Bureau of the Ministry. It was hoped that these meetings, in which the Ministry had expressed great interest prior to Mr. Setser's arrival, would be of a general nature and that discussions would not become involved in technical details. The Japanese, however, presented Mr. Setser with a long list of complex questions, many of them identical with those already covered in previous informal discussions with Embassy officers. In the course of these meetings three major points evolved which had not been fully explored during the informal discussions. These are transmitted to the Department with a request for clarification and guidance, since it is anticipated that these questions will again be raised at the final review meetings.

a. The Japanese asked Mr. Setser if the second sentence, paragraph 5, Article VI, was intended to cover cases in which American nationals or companies hold stocks or other interests in companies duly organized under Japanese law, as well as interests held indirectly. Mr. Setser having replied in the affirmative, the Japanese then pointed out that cases involving American interests held jointly with or through nationals or companies of third countries would raise difficult questions in view of the apparent conflict between this paragraph and Article XXI, paragraph 1 (e). (Mr. Setser informed Embassy officers that further consideration would be given this point.)

b. The Japanese asked whether a Japanese shipping company might lease, occupy, and use wharfs, warehouses, and other installations in the U.S. in accordance with Article VII. Mr. Setser replied that Japanese lines engaged in international shipping were assured this right under Article IX. The Japanese then pointed out that the latter Article hinges on the rights and privileges secured under Article VII, which in turn mentions only the establishment of branches and agencies by concerns engaged in international shipping. The Japanese side believes that there may be some oversight in this connection, and would welcome a modification of either of

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these two Articles which would clearly the right of Japanese shipping lines to wharfs, warehouses, and similar installations in the U.S.

6. The Japanese asked if subsidies could be granted to nationals engaged in activities for which national treatment is specified in the Treaty and withheld from alien residents engaged in similar enterprises. They were informed that the U.S. position was that government subsidies were to be extended equally to domestic firms and to foreign competitors of the same class and circumstances established within the country (reference is made to the Department's A-49 of May 2, page 2 concerning Article VII). The Japanese pointed out, however, that the Merchant Marine Act of 1936 (U.S.C. Sec. 1152) states that only U.S. citizens may apply for subsidies for the construction of vessels destined to the U.S. Merchant Marine. Is this Act interpreted to mean that a Japanese-owned American company in the U.S. could be subsidized if it were building vessels for the U.S. Merchant Marine?

For the Ambassador:

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